HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 689/04 (M/S)

Kulveer Singh

Vs

A.D.J. F.T.C. First Haridwar and others.

Approved for reporting

_____

~~Not Approved for Reporting~~

Date of decision 6.08.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 689 (MS) of 2004

Kulveer Singh
S/o Late Sh. Bharat Singh
R/o Qasva Jhabreda, Pargana
Manglore, Tehsil Roorkee,
Dist. Haridwar. ..... Petitioner

Vs

Additional District Judge
F.T.C first Haridwar and others. .....Respondents

Counsel for the petitioner Sh. Alok Singh
And Sh. Sanjay Kaushik
Standing counsel for the respondents

Dated: 6-8-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Alok Singh learned counsel for the petitioner assisted by Sh. Sanjay Kaushik and Standing Counsel for the respondents.

By the present writ petition the petitioner has challenged the order dt. 3-12-1991 passed by the respondent No.2 and order dt. 22-1-2004 passed by the respondent No. 1 by which the injunction was refused by the Trial Court and the appeal has also been dismissed.

Brief facts giving rise to the present writ petition are that the suit for permanent injunction was filed against the respondent stating therein that the property given in the schedule of the plaint be neither attached nor auctioned for the purposes of recovery of the Sales Tax Department and the petitioner was a bona-fide purchaser who purchased it on 23-8-1998. Originally the plaintiff has claimed the relief of the

permanent injunction praying not to make any recovery against the petitioner by way of auctioned proceedings in respect of scheduled 1 and 2, the same is quoted below:-

तफसील सम्पत्ति मद (अ)

(1) एक किता अहाता जुमला तामीरात व तसरूफीत जिसमें बीस किता दुकांनात व पेशीन सहम आदि शामिल है और जो न्यूमार्किट के नाम से कस्बा झबरेडा से प्रसिद्ध हो चुका है। जिसके उत्तर में सडक शारेआम अलमारूफ झबरेडा गुरूकुल नारसन रोड दक्षिण में समपत्ति ललित कुमार माहेश्वरी आदि पश्चिम में सम्पत्ति श्री पटूमन जैन जिसक एक भाग में स्टेट आफ इन्डिया की झबरेडा शाखा इस समय स्थित है पूरब में सम्पत्ति श्रीरामकुमार कुल सम्पत्ति वाके कस्बा झबरेडा परगना मंगलौर तहसील रूडकी हरिक्षरा।

(2) एक किता मकान मय जुमला तामीरात व तसर्खफात हर किस्म के कस्बा झबरेडा । मौहल्ला पुलिस चौकी। जिसके उत्तर में जैनमन्दिर व मकान श्री सत्यपाल नाई दक्षिण में मकान श्री वन्शीलाल पख्विममंगला थाने वाली पूरब में मकान श्री रोशनलाल । कुल सम्पत्ति उपरोक्त ग्राम झबरेडा प0 मंगलौर तहसील रूडकी जिला हरिद्वारा।

The suit was contested by the State of U.P. through Collector Haridwar. In the written statement it was mentioned that the sale deed was null and void. Initially the injunction was in favour of the petitioner but later on, the same was vacated on the ground that by virtue of order 39 Rule (a) of the Code of Civil Procedure the injunction cannot be granted.

Proviso to Section 34 of the U.P. Trade Tax Act safeguards the interest of transferee in good faith.

Section 34 provides as under:-

"Transfer to defraud revenue void- (1) Where, during the pendency of any proceeding under this Act, any person liable to pay any tax or other dues creates a charge on or transfers, any immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings.

Provided that nothing in this section shall impair the rights of a transfer in good faith and consideration.

(2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, (Act X of 1949) , or any other financial institution specified by the State government by notification in this behalf."

Proviso to Section 34 protects the right of the transferee in respect of transfer made in good faith and for consideration.

Order 39 Rule 2 (f) provides as under:-

To restrain, any auction intended to be made or, the effect of any auction made, by the Government [unless adequate security is furnished].

The aforesaid provision also sufficiently safeguards the interest of the respondent No.3 after adequate security is furnished by the petitioner.

There is difference between clause (g) and (f) of Order 39 Rule 2 of the Code Of Civil Procedure, which provides as under:-

> *To restrain, any auction intended to be made or, the effect of any auction made, by the Government [unless adequate security is furnished].*
>
> *To stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished.*

Counsel for the petitioner has undertaken to give security in respect of the property scheduled (1) and (2) mentioned in the plaint Annexure-1 to the writ petition.

It is settled law that the Civil court has jurisdiction to decide this dispute as if the property purchased by the petitioner is sold out, the petitioner will suffer irreparable loss.

In view of the aforesaid facts safeguarding the interest of the, respondent No. 3, Civil Judge is directed to take adequate security in terms of the property scheduled (1) and (2) as mentioned in the plaint and may pass appropriate order.

Subject to the aforesaid observation, the writ petition is disposed of in terms of the injuction prayed by the petitioner. The learned Civil Judge will pass appropriate orders by safeguarding the interest of the state by taking adequate security in terms of the

property mentioned under schedule (1) and (2). The suit shall be disposed of within a period of 4 months from the filing of the certified of the order.

Subject to the aforesaid observation, the writ petition is disposed of.

Dated: 6-8-2004 **(RAJESH TANDON J.)**

M.K.